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Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
Portals II
445 12th Street, S.W.
Suite TW-A325
Washington, D.C. 20554

Re: Telstar International, Inc. Comments on Petitions for Reconsideration and/or Clarification, In the Matter of The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128, NSD File No. L-99-34

Dear Madam Secretary,

Enclosed please find an original and four (4) copies of Telstar International, Inc.'s Comments in the above proceeding. Please date-stamp the extra copy of the cover letter and return it to me in the enclosed self-addressed, stamped envelope for evidence of filing. Thank you for your attention to this matter. Please contact me at the below phone number with any questions or concerns you may have regarding this submission.

Very truly yours,

Hope Halpern Barbulescu
Director of Regulatory Affairs
Telstar International, Inc.
1 North Broadway
White Plains, NY 10601
Ph: 914-428-5555 ext. 219
Fx: 914-428-5640
Hope@telstar-usa.com

Encls.

cc: The Honorable Michael K. Powell, Chairman
The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Kevin J. Martin
Dianne Griffin-Harmon, Acting Chief, CCB, Network Services Division
Tania Cho, CCB, Network Services Division
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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The Pay Telephone Reclassification And Compensation Provisions of The Telecommunications Act of 1996	)	CC Docket No. 96-128
	)	
RBOC/GTE/SNET Payphone Coalition Petition for Clarification	)	NSD File No. L-99-34

COMMENTS OF TELSTAR INTERNATIONAL, INC. ON PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION

Hope Halpern Barbulescu, Esq.
Director of Regulatory Affairs
Telstar International, Inc.
1 North Broadway
White Plains, New York 10601
914.428.5555 ext. 219
914.428.5640 fax

Dated: October 9, 2001

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TELSTAR INTERNATIONAL, INC.
COMMENTS ON PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION

INTRODUCTION AND SUMMARY

Telstar International, Inc. ("Telstar") submits these Comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice released on August 20, 2001 in the above proceeding. [1] Telstar strongly opposes the petitions submitted by WorldCom and AT&T, which advocate practices that discriminate against switch based resellers ("SBRs") and gives IXCs an unfair competitive advantage in the dial around, prepaid, and 800-access services markets.

Specifically, both AT&T and WorldCom have asked the Commission to allow them to collect payphone compensation from SBRs for uncompleted calls originating from payphones. This proposal conflicts with Section 276 of the Act, well-settled Commission Orders providing that only completed calls are compensable, and Sections

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1 Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, NSD File L-99-34, *Second Order on Reconsideration*, FCC 91-109 (rel. April 5, 2001) (*Second Order on Reconsideration*).

201 and 202 of the Act requiring rates and charges of common carriers to be just and reasonable and non-discriminatory.

Under the AT&T/WorldCom plan, resellers would be forced to pay PSP compensation for all call attempts (both completed and uncompleted calls), while IXCs would remit PSP compensation for only those calls that complete to the end user. As a result, the AT&T and WorldCom proposals would foist unnecessary, uneconomic, and illegal charges on resellers that neither AT&T nor WorldCom would bear, allowing IXCs to undercut reseller prices for 800 access, dial around and calling card services and overcompensating PSPs.[2] Given that IXCs are some of the largest providers of 800 access services and compete with resellers in this market segment, the enormous discriminatory effects of the AT&T/WorldCom proposals are self-evident.

The AT&T/WorldCom proposals not only discriminate between IXCs and their reseller customer/competitors, but also between different classes of carriers. The AT&T/WorldCom proposal disproportionately harms carriers who provide mostly international service, since they have the largest percentage of uncompleted calls, and thus will see the greatest increase in PSP compensation levels if the AT&T/WorldCom proposals are adopted. As a result, the AT&T/WorldCom proposals will impact customers who make international calls more severely than those who make domestic calls, because they will see the greatest increase in their rates if the AT&T/WorldCom proposal is adopted.

Telstar also comments on Global Crossing's proposal to use a timing surrogate to determine when a call is completed. Telstar believes that the existing industry standard of answer supervision is the most appropriate means for measuring when a call is

[2] Telstar uses the term "800 access services" to encompass all dial-around and calling card services.

completed and therefore, no timing surrogate is necessary. A more appropriate and equitable measure for providing assurances that PSPs are receiving compensation for completed calls is for the Commission to clarify its *Second Order on Reconsideration* to allow or require resellers to continue to enter into contracts with billing clearinghouses to handle their PSP compensation requirements directly. This solution, coupled with the Commission's recent requirements in *Bell Atlantic-Delaware, Inc., et al v. Frontier Communications Services Inc., et al,*[3] obligating IXCs to assist in PSPs and identify 800 numbers held by SBRs, is consistent with the Act, prior Commission orders, and generally more administratively efficient, competitively neutral and non-discriminatory than any of the proposals put forth by the IXCs. Telstar discusses these issues in further detail below.

DISCUSSION

I. THE AT&T AND WORLDCOM PROPOSALS VIOLATE SECTION 276 OF THE ACT AND THE COMMISSION'S PRIOR RULINGS.

Both WorldCom and AT&T submitted petitions asking the Commission to allow them to collect payphone compensation from resellers for uncompleted calls. WorldCom has asked the Commission to change the definition of what constitutes a completed call to "one that is completed on the underlying carriers network, or one that is handed off to switch-based reseller customers..." while AT&T has asked the Commission simply to permit it to charge resellers for uncompleted calls without actually making a definitional

[3] *Bell Atlantic-Delaware, Inc., et. al., v. Frontier Communications Services, Inc., et. al.*, File No. E-98-48 2001 WL 327619 (F.C.C.) released April 5, 2001.

change.[4] At bottom, the effect of both proposals is the same – if either proposal is adopted, resellers will be assessed PSP compensation for each *call attempt*, while IXCs will pay only for *calls that complete* to the end user.[5] As discussed further below, charging resellers payphone compensation for uncompleted calls is contrary to multiple sections of the Act, Commission Orders, state law, as well as long held Commission principles and should not be tolerated by the Commission.

A. **The AT&T/WorldCom Proposal Violates Section 276 Of The Act by Requiring Resellers to Compensate PSPs for Incomplete Calls**

The AT&T/WorldCom proposal violates Section 276 of the Act by forcing resellers to compensate PSPs for uncompleted calls. This result conflicts with the plain language of Section 276 of the Act.

To ensure continued viable and effective competition in the provision of payphone services, Section 276 of the Act, as amended, required the Commission to restructure the payphone industry by *inter alia*, changing the manner in which PSPs were compensated for payphone calls.[6] While Section 276 expanded a PSPs right to compensation, this right is not limitless or unconditional. Rather, Congress mandated a specific basis for compensation (a completed call). Pursuant to Section 276, Congress

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4 See, *WorldCom Petition*, p. 1, *AT&T Petition*, p. 1. Similarly, Qwest and Broadwing have informed their customers that they too will begin charging switch-based resellers for uncompleted calls made from payphones regardless of whether the resellers have preexisting arrangements with billing clearinghouses.

5 Because both the WorldCom and AT&T petitions are identical in this respect, Telstar collectively identifies their position as the "AT&T/WorldCom Proposal" for ease of reference.

6 Prior to enactment of Section 276 of the Act, private payphone owners were compensated on a per-payphone basis as a result of the Telephone Operator Consumer Services Improvement Act ("TOCSIA") of 1990. *See also*, Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, *Second Report and Order*, 7 FCC Rcd. 3251 (1992)

mandated that PSPs receive compensation for "each and every *completed* intrastate and interstate call," made from a payphone.[7] Accordingly, a PSP is not entitled to compensation unless a call is completed from its phone.

B. WorldCom's Proposed Definition of a Completed Call is Contrary to FCC and Court Rulings

The definition of what constitutes a completed call is well settled, and neither AT&T nor WorldCom has provided any legal basis or principled reason for changing it. In the *First Payphone Order*, the Commission defined a completed call as, "...a call that is answered by the called party."[8] The finding that a completed call is one that reaches the called party reflects the Commission's long-held position that it is inequitable to require carriers to pay PSP compensation for calls for which they generate no revenue. In its *First Report and Order on Operator Service Provider Compensation* in CC Docket No. 91-35, the Commission found that:

> Uncompleted calls should not be compensable as a general rule. It would not be equitable to require OSPs to compensate payphone owners for calls that generated no revenue for the OSPs. In addition, purposeful uncompleted calls could be used improperly as a way to increase compensation.[9]

In the *First Payphone Order*, the Commission further expounded that because calling card calls are perceived by customers as one call, "where an 800 calling card call is routed through an IXC's platform, it should not be viewed as two distinct calls--one to the

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7 47 U.S.C. § 276(b)(1)(A). Emphasis added.

8 The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Report and Order*, Docket No. 96-128, 11 FCC Rcd 20,541 (1996) (*First Payphone Order*), ¶ 63.

9 In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, *Report and Order and Further Notice of Proposed Rule Making,* 6 FCC Rcd. 4736 ¶ 37. (rel. August 9, 1991).

platform and one to the called party."[10] This position is consistent with that of the United States Court of Appeals for the District of Columbia Circuit which recognized the one-call nature of a calling card call from the caller's point of view. [11]

Neither WorldCom nor AT&T has provided any credible basis for changing the definition or treatment of a completed call. Indeed, both of WorldCom's predecessors, LDDS WorldCom and MCI have consistently supported (at least until now) the Commission's finding that a call is completed-- and therefore compensable-- only when it reaches the called party. In an earlier pleading in this docket, MCI asked the Commission, "to clarify that a call is 'completed for compensation purposes when the call is transmitted to the called party and there is a billable call."[12] MCI explained that, "This clarification is necessary because, apparently, some LECs may consider a call completed a soon as it reaches an intervening carrier's network, even if the call is not successfully transmitted to the called party."[13] MCI expressed that assessing PSP compensation for uncompleted calls is unacceptable because, "carriers do not bill consumers for such 'uncompleted' calls and, it is clear from the Act, Congress did not intend this Commission to prescribe compensation for such calls."[14] Similarly, LDDS WorldCom urged the Commission to make clear that:

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10 *First Payphone Order*, ¶63

11 *Id.*, ¶61. (Citations omitted) In that decision, the Circuit Court found that, "the caller perceives (and intends) the call as a single call, the ultimate destination of which is not the provider but a third party."

12 MCI Comments, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, filed July 1, 1996, p. 2.

13 *Id.*

14 *Id.*

> An access code call involving 800 accesses is complete only when the called station answers. For the purposes of per call compensation, the Commission should further order that an access code call is not completed unless the call is billable by the carrier serving the caller. For example, assume a carrier subscribes to an LDDS WorldCom 800 number for the purposes of ingress to its own network. Under this arrangement, the 800 call routed over the LDDS WorldCom network to another carrier's switch should not be viewed as a subscriber 800 call, and no 'completed call' should be found to have occurred under this serving arrangement unless the caller reaches another station.[15]

Nothing in either the WorldCom or AT&T petitions justifies a change from the well-settled principle that carriers should not be charged for calls that do not reach the called party. Moreover, the AT&T/WorldCom proposals would result in many resellers being forced to bear millions of dollars in excess costs that they will not be able to recover from customers. Carriers still do not charge end users for uncompleted calls, and both Federal law and several states have regulations that make doing so unlawful.[16] WorldCom's argument is admittedly based on nothing other than its own corporate interest in avoiding costs to implement the Commission's tracking requirements first articulated in the *First Payphone Order* and recently in the *Second Order on Reconsideration*.[17] Not surprisingly, WorldCom omits any discussion of how its new position disproportionately harms resellers. WorldCom's corporate agenda should not be the basis for drastically changing what is both well-settled law and equitable public policy.

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[15] Comments of WorldCom, Inc., *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, filed July 1, 1996, pp. 9-10.

[16] 47 U.S.C. § 226(b)(F)(G), entitled the Telephone Operator Consumer Services Improvement Act, or "TOCSIA," prohibit carriers for charging for unanswered telephone calls. Similarly, Texas has promulgated rules prohibiting collection of PSP compensation for intrastate uncompleted calls. Texas P.U.C. §26.344(d)(1)(G).

[17] WorldCom Petition, pp. 2-4.

1. AT&T's Practice Of Charging Resellers For Uncompleted Calls Is The *De Facto* Equivalent Of WorldCom's Proposal And Is Equally Unlawful.

Equally disturbing is AT&T's request that the Commission sanction its practice of charging resellers for uncompleted calls.[18] AT&T's proposal is the *de facto* equivalent of WorldCom's new proposed definition because it requires resellers to pay per call compensation for uncompleted calls, equally violating the Act, Commission Rules and basic notions of fairness and equity. While AT&T may have been charging resellers payphone compensation for uncompleted calls for some time, up until now resellers were able to avoid overcompensation by directly compensating PSPs through a clearinghouse.[19] Specifically, if a reseller could demonstrate to its IXC provider that it used a clearinghouse to compensate PSPs directly, IXCs would waive any PSP compensation requirements. Since the release of the *Second Order on Reconsideration* however, IXCs have begun to refuse to honor reseller arrangements with clearinghouses, leaving resellers with no option other than to either attempt to enter into contracts with each and every PSP (a practical impossibility) or to acquiesce to IXC demand to provide excessive compensation.[20] AT&T, WorldCom, Qwest, and Broadwing all have notified their reseller customers that they are planning to unilaterally nullify agreements that recognize a reseller compensates PSPs through clearinghouses and will

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18 Similarly, WorldCom has recently informed its reseller customers that it too will begin charging them for uncompleted calls in October.

19 Under such an arrangement, resellers would demonstrate that they were fulfilling their obligations through a clearinghouse, and the IXC would not collect compensation. Telstar, for example uses Billing Concepts to manage its payphone compensation obligations. Each quarter, Telstar sends its call detail records to Billing Concepts, which then disperses the appropriate compensation to PSPs.

20 Qwest, AT&T, WorldCom, Global Crossing and Broadwing have all refused to recognize reseller agreements with clearinghouses.

begin charging them PSP compensation for *all* calls, including incomplete calls unless the resellers meet unreasonable demands to contract with each and every one of the thousands of PSPs nationwide.[21] Given that WorldCom and AT&T alone account for over 85% of the IXC marketplace, this new policy makes it essentially impossible to find alternative carriers and avoid these discriminatory practices and therefore, Commission action is needed to put an end to this behavior.

C. The AT&T/WorldCom Plan Violates Section 202(A) Of The Act Because It Discriminates Against Resellers In Favor Of IXCs Who Compete Directly With Resellers In The 800 Access Market.

The WorldCom and AT&T plans unfairly discriminate against resellers who directly compete with IXCs in the dial around, calling card and 800 access services markets by foisting costs on resellers that IXCs do not have to bear. Under the AT&T/WorldCom proposal, resellers would incur PSP compensation costs for *each call attempt* while IXCs would continue to pay PSP compensation only for completed calls. The result is to greatly increase resellers' costs while allowing IXCs to undercut reseller prices for the same services. Such discrimination is blatantly illegal. Section 202(a) of the Act states:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.[22]

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[21] See Telstar International, Inc. *ex parte* presentation in this proceeding, submitted September 20, 2001.

[22] 47 U.S.C. §202(a).

The AT&T/WorldCom proposal is a patent violation of this Section of the Act because it unfairly and unreasonably burdens resellers to the benefit of their IXC competitors. If either the WorldCom or AT&T petition is approved, resellers will be put at an unfair competitive disadvantage because they will be forced to compensate PSPs for uncompleted calls while IXCs are not similarly burdened. This discrimination is unfair, because it disproportionately harms resellers vis-à-vis IXCs both of whom provide 800 access and dial around services to consumers, and is unnecessary because there are less destructive ways to ensure that the goals of Section 276 of the Act are met. In Telstar's case, the AT&T/WorldCom proposal would cause Telstar's PSP compensation costs to increase over 300%, to potentially $1M per year. These costs could not be absorbed by Telstar and would have to be passed on to customers either by increased rates, or increased per call surcharges. IXCs like WorldCom would not face these same costs, and would therefore be able to unfairly undercut Telstar's prices for their competing services.[23] There can be no doubt that this discrimination clearly violates Section 202(a) of the Act.

The discriminatory and anti-competitive effect of the AT&T/WorldCom proposal is compounded by IXCs like AT&T, WorldCom and Qwest who also offer payphone service. If the AT&T/WorldCom proposal is accepted, AT&T, WorldCom and Qwest can continue to charge resellers for uncompleted calls and then turn around and book those revenues as profits to their payphone business units – greatly increasing their payphone revenues at the resellers expense, and in violation of Section 276 of the Act

[23] It should not be surprising that the largest providers of prepaid service include Qwest and WorldCom. (See excerpt from the Pelorus Group Report, provided hereto as Attachment A). AT&T also provides prepaid calling card and other 800 access services.

which allows them to receive compensation for calls made from their payphones only for completed calls.

1. The AT&T And WorldCom Proposals Discriminate Against Carriers Who Provide International Service.

Among providers of calling card, debit card and 800 access services, the AT&T/WorldCom proposal discriminates against those resellers who provide largely international services. In its Petition, AT&T asserts that its completion rate is "roughly 70%".[24] While a 70% completion rate is possibly the norm for carriers who provide mostly domestic service, Telstar and other providers of mostly international traffic have dramatically higher levels of uncompleted calls. For example, while Telstar enjoys completion rates to its calling card platform for interstate calls somewhere on par with the 70% AT&T references in its petition,[25] *over 95% of the attempted calls placed by Telstar customers are to overseas points, most with completion rates of between 10 and 30%.*[26] Until network and infrastructure advancements substantially improve completion rates to these foreign points, Telstar expects to continue to see high levels of uncompleted calls from its core customer bases. Accordingly, if the AT&T/WorldCom proposals are adopted, resellers who provide services largely to immigrant and ethnic communities will be drastically affected. To illustrate, Nigeria is one of top ten destinations called by Telstar customers. The completion rate to Nigeria, however, is roughly 10-15%.

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24 AT&T Petition, p. 3, fn. 4.

25 Id, p. 6, fn 4.

26 For example, calls to the African continent roughly have completion rates of between 10-15%. Calls to Central and South America have about a 25-30% completion rate, while calls to Western Europe generally enjoy a higher completion rate of roughly 45-60% depending on the country and domestic calls have about a 70- 80% completion rate.

Similarly, Ecuador -- also one of the top ten destinations called on Telstar's network -- enjoys a completion rate of only between 20-30%. Mexico, another top 10 destination, enjoys completion rates of 20-40% depending on the region called. Given the disparity between international and domestic completion rates, it is easy to see how as a whole, an international carrier might realize completion rates of only 30-40%. Accordingly, the AT&T/WorldCom proposal will affect international carriers much more severely than domestic carriers. Telstar has estimated that, given its existing traffic breakout, that if the AT&T/WorldCom proposal is adopted, Telstar could see its compensation obligations increase by as much as 330% or more. Accordingly, the AT&T/WorldCom proposal presents international carriers like Telstar the Hobson's choice of either greatly increasing rates and therefore pricing itself out of the market or to block calls that originate from payphones.

2. <u>The AT&T and WorldCom Proposal Discriminates Between End Users</u>

The AT&T/WorldCom proposal will significantly harm certain classes of customers, specifically immigrants, low-income customers and the credit-challenged. If the AT&T/WorldCom proposal is adopted, resellers will need to pass excessive payphone surcharges to their end users. As discussed above, since international completion rates are significantly lower than domestic completion rates, those customers calling internationally will be most harmed by the AT&T and WorldCom proposals since they will see dramatic increases in their rates as costs imposed by the IXCs are passed through to the consumer via increased per minute charges or charges for all attempted calls regardless of whether the call is completed. Similarly, the AT&T/WorldCom proposal will have significant ramifications for low income and credit-challenge customers who often use 800 access and dial-around services in lieu of presubscribed long distance services. The twin purposes central to the Act are to increase competition and deliver low cost, competitive communications options to *all* consumers. Cost increases caused by the AT&T/WorldCom practices will have to be passed on to consumers via higher rates, or resellers will exit the market for 800 access services made from payphones. Either result is contrary to the both the intent of Congress and the Commission's mandate.

D. The AT&T/WorldCom Proposal Violates Section 201(b) Of The Act By Imposing Unjust And Unreasonable Costs On Resellers.

The AT&T/WorldCom proposals would impose costs on resellers that cannot possibly be squared with the Act. Section 201(b) requires that charges, classifications, and practices of common carriers be just and reasonable.[27] The proposal violates Section 201(b) because by billing resellers for uncompleted payphone calls – on which the IXCs have no legal, regulatory, contractual or other obligation to pay PSP compensation—the IXCs have imposed an unjust and unreasonable practice on their reseller customers. Similarly, the costs imposed on resellers by the AT&T/WorldCom proposals are unreasonable given that there is no economic basis for charging for uncompleted calls. Moreover, WorldCom has provided no cost justification for the $0.02 "handling fee" that it is imposing on its customers for "processing" all calls that originate from payphones. Given the discriminatory results and excessive and punitive costs that the

[27] 47 C.F.R. §201(b)

AT&T/WorldCom proposal would impose on resellers, the AT&T/WorldCom proposal cannot be found to be just and reasonable by any stretch of the imagination.

II. THE AT&T/WORLDCOM PROPOSAL IS ANTI-COMPETITIVE, DISCRIMINATORY AND PREDATORY.

A. AT&T and WorldCom's Practice of Charging Resellers for Uncompleted Calls is Anti-Competitive, and Predatory.

The AT&T/WorldCom proposal is predatory, anti-competitive, and will force resellers from the 800 access and dial around marketplace. As discussed above, the AT&T/WorldCom proposal is unjustly discriminatory because it foists excessive costs on resellers that AT&T, WorldCom and other the resellers other IXC competitors do not have to bear. The IXCs' recent refusal to honor its agreements with resellers that allow for PSP compensation through clearinghouses has compounded this problem. By forcing resellers to exclusively use IXCs to handle PSP compensation, IXCs have "cornered the market" for processing per call compensation, giving resellers no choice but to provide compensation for incomplete as well as completed calls. As discussed above, WorldCom has added insult to injury by also charging resellers a $0.02 per call fee for handling calls originating from payphones.[28] While the *Second Report and Order* permits IXCs to recover their costs for processing per-call compensation, but provides no guidance as to what those charges should encompass. WorldCom -- which has admittedly chosen to ignore the Commission's mandate that it set up tracking for PSP calls -- cannot claim that the $0.02 per call "handling" charge it has now demanded of its resellers compensates it for implementing call tracking systems which it has no plans to put in place. The

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[28] See WorldCom Reseller Letter, provided hereto as Attachment B.

purported rationale of both WorldCom's and AT&T's petitions is get the Commission to allow them to bypass deploying systems to track completed calls and to instead charge resellers for all calls originating from payphones.[29] Neither WorldCom nor any other carrier has proposed any credible cost justification for charging resellers for uncompleted calls and "handling" surcharges. Neither WorldCom nor any other carrier should be permitted to continue to abuse this opportunity and turn per-call compensation owed PSPs into a profit center.

B. The WorldCom and AT&T Proposals Unjustly Enrich IXCs and PSPs at Resellers' Expense

The WorldCom and AT&T proposals unjustly enrich PSPs at resellers ' expense. As noted above, PSPs are entitled by the Act to receive compensation for "each and every *completed* intrastate and interstate call," made from a payphone.[30] Accordingly, a PSP is not entitled to compensation unless a call is completed from its phone. The AT&T and WorldCom proposals would result in PSPs receiving more compensation than that to which they are entitled under the Act since PSPs would receive compensation for uncompleted calls as well. It should be noted, that WorldCom and AT&T, both of whom offer payphone services, will benefit since under their proposal they will be able to collect PSP compensation for incomplete calls made from their payphones.

Although AT&T recognizes that its proposal overcompensates PSPs,[31] it flippantly disregards reseller concerns, and preposterously asserts that resellers should find AT&T's

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29 See *WorldCom Petition* pp. 4-5

30 47 U.S.C. § 276(b)(1)(A). Emphasis added.

31 *AT&T Petition*, p. 2

overcharging to be acceptable.[32] AT&T's proposal will result in resellers paying millions of extra dollars in payphone compensation that they will be unable to recoup from end users.[33] Contrary to AT&T's apparent misperception, switch-based resellers are fully capable of determining when a call is completed because the reseller receives answer supervision from the terminating LEC. The switch's ability to receive answer supervision is one of the most basic functions inherent in any switch used for telephony today. Call completion information can then be easily be transmitted to IXCs from resellers via an email and an excel spreadsheet as Telstar currently does each quarter to its billing clearinghouse, Billing Concepts. In the event of a dispute, resellers can provide IXCs – or PSPs directly, records of all CDRs from any particular 800 number. Performing these functions is infinitely less costly than requiring Telstar to compensate PSPs for all attempted calls plus processing fees. In any event, whether a reseller chooses to incur costs associated with capturing and transmitting this data should be the reseller's decision---not AT&T's.

C. The IXC Offer to Block Reseller Calls From Payphones is An Invitation for Resellers to Leave the Market.

In order for resellers to avoid being assessed the fees discussed above, they must request that the IXC block any toll-free access numbers from being used at any payphone. Unless resellers make this request, they "will remain liable for payment for all

[32] *Id.*

[33] Resellers like Telstar who serve predominantly ethnic communities calling international destinations often have very high incompletion rates. While Telstar is envious of AT&T's 70% completion rate to its prepaid platform, Telstar's completion rates are much lower.

calls originating from a payphone and delivered to [their] platform."[34] This offer to block toll-free numbers on resellers' behalf is simply an invitation for resellers to leave the market, and an anti-competitive attempt to increase IXC market share. For Telstar and other resellers, to request toll-free call blocking would be to voluntarily withdraw from the payphone market entirely, for no payphone user could access their services.

D. The AT&T/WorldCom Proposal Undermines The Commission's Determination In The First Payphone Order That PSP Compensation Should Be Market-Based.

In its *First Payphone Order*, as well as subsequent orders in this proceeding, the Commission has time and again indicated its preference that PSP compensation evolve over time to a market based level.[35] Further, the Commission envisioned an environment where the market would set the compensation amount, and PSPs would negotiate with telecommunications carriers regarding PSP compensation. This Commission objective would be severely undercut by the AT&T/WorldCom proposals. If PSPs are permitted to receive overcompensation from IXCs for all calls passed to resellers, PSPs will have no incentive whatsoever to enter into alternative market-driven compensation arrangements with resellers since doing so would require them to forgo the excessive compensation afforded by the AT&T and WorldCom proposals. Accordingly, the AT&T/WorldCom proposal severely undermines the Commission's goal of achieving a truly competitive market-based telecommunications environment.

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34 WorldCom Letter, p.

35 See generally, First Payphone Order, ¶ 52, " In keeping with our long-term goal to have the market set the compensation amount, we define fair compensation above as where there is a willing seller and a willing buyer at a price agreeable to both." and, ¶ 73, allowing the "carrier-payor and the PSP may agree to a compensation rate that is different" from the default rate.

III. GLOBAL CROSSING'S PROPOSAL IS UNNECESSARY

Global Crossing has proposed using a timing surrogate to determine when a call made by a reseller has been completed. While a timing surrogate may be preferable to the AT&T/WorldCom proposals, use of a timing surrogate is unnecessary. Answer supervision is the industry standard for determining when calls are completed and there is no reason to change that standard.

The AT&T/WorldCom petitions complain that they have not developed the ability to accurately track calls to completion unless the calls terminate on their networks. While Telstar believes that the complaints of the IXCs are overblown,[36] IXC failure to implement the Commission's tracking requirements does not justify charging resellers for uncompleted calls as advocated by AT&T and WorldCom or for using a timing surrogate as proposed by Global Crossing. The industry standard for determining whether a call is completed is answer supervision. Telstar knows when a call is completed because its switch receives answer supervision from the terminating carrier's switch. The terminating carrier then bills Telstar based on that answer supervision. Similarly, for purposes of PSP compensation, Telstar remits via Billing Concepts, payphone compensation for calls originating from payphones for which it has received answer supervision on the terminating end. Answer supervision is the industry standard and the way carriers bill each other for *all* traffic terminating on each other's networks. There is no reason to single out the 800 access and dial around telecommunications marketplace for different treatment. If a carrier believes that it is receiving incorrect call completion

[36] As discussed above, resellers can provide IXCs with CDRs to support their findings regarding what calls completed.

information, it can address those issues by requesting an audit of all CDRs or via arbitration.

If the Commission does, however, determine that use of a timing surrogate should be adopted, Global Crossing's proposed 25 second surrogate is unacceptable, as is the 40 second allotment used by Qwest in its March 15, 2001 *ex parte* presentation in this proceeding. An appropriate timing surrogate would need to take into consideration the time necessary for inputting an 800 access number, waiting for and receiving any necessary further instructions, receiving a dial tone, entering the destination number, and accounting for several rings at the called end. Further, any surrogate for international calls must also include an allowance for post-dial delay. These estimations don't even consider additional factors such as a customer's need to redial due to a mistaken entry or network busy signal. Telstar has determined that it is not uncommon for it to take roughly 120 seconds to connect an international call. Accordingly, any acceptable timing surrogate (at least for international calls) would have to be at least 120 seconds long, and should apply equally to IXCs and resellers to prevent the sort of discriminatory and anti-competitive effects endemic to the WorldCom and AT&T proposals.

IV. THE COMMISSION SHOULD CLARIFY ITS DECISION TO ALLOW RESELLERS TO USE CLEARINGHOUSES TO DIRECTLY HANDLE RESELLER PSP COMPENSATION OBLIGATIONS.

The purpose of the *Second Order on Reconsideration* was to ensure that PSPs are paid the full and fair compensation they deserve in accordance with Section 276 of the Act. To achieve this goal, the Commission required IXCs to implement additional tracking and reporting mechanisms. Telstar recognizes that IXCs will need to spend time and money to develop procedures to meet those requirements, which they rationally seek to avoid. The answer however, is not for IXCs like WorldCom and AT&T to attempt to avoid these costs by charging SBRs for uncompleted calls or blocking all SBR calls made from payphones. As demonstrated above, such a result would be inconsistent with existing law and sound public policy. Similarly, it is unreasonable to require SBRs to enter individual contracts with each and every one of the hundreds of PSPs in the nation. That standard is impossible to achieve. Indeed, IXCs do not have agreements in place with each and every PSP. Instead, IXCs generally meet their compensation obligations via a billing clearinghouse. Accordingly, Telstar proposes that a simpler and more effective method of achieving the Commission's desired result would be to clarify the *Second Order on Reconsideration* to allow resellers to meet their compensation obligations by using one of the nationally recognized billing clearinghouses to directly process payphone compensation on the reseller's behalf. Under the Telstar proposal, if a reseller could demonstrate that it had an arrangement in place with a clearinghouse, the reseller would not have to use an IXC to handle its PSP compensation requirements.

There are two main billing clearinghouses that administer payphone compensation today – Billing Concepts and Cincinnati Bell. These clearinghouses have strong relationships with LECs (including those who are payphone providers) because in addition to performing payphone clearinghouse responsibilities they also perform LEC billing. Clearinghouses also have relationships with independent PSPs via their role in remitting compensation to these PSPs on behalf of IXCs and resellers. Clearinghouses also have strong relationships with IXCs via their role in providing IXC billing for dial around calls as well as their role in administering PSP compensation on behalf of those

IXCs. For some carriers -- like Qwest -- Billing Concepts performs a dual function – it administers the payphone compensation on behalf of Qwest's IXC arm, and it remits compensation to Qwest as a payphone provider. Given these relationships with all parties, billing clearinghouses should be an acceptable surrogate for requiring a reseller or IXC to establish relationships with each and every one of the thousands of payphone providers in the United States.

Allowing resellers to directly remit compensation through a recognized clearinghouse is consistent with the Commission's *Second Report and Order*. In that Order, the Commission found that:

> [T]he carrier responsible for compensating the PSP [for coinless calls where more than one carrier is involved in routing] is the first facilities-based interexchange carrier to which a completed coinless access code or subscriber 800 payphone call is delivered by the LEC unless another carrier comes forward and identifies itself to the PSP as the party liable for compensating the PSP.[37]

Resellers who contract with clearinghouses meet this requirement because they identify themselves to the PSP through their call detail records and remit payment directly to PSPs through the clearinghouse.

This arrangement is also consistent with Section 64.1310(b) of the Commission's Rules stating:

> Facilities based carriers and resellers may establish or continue *any other arrangements* that they have with payphone service providers for the billing and collection of compensation for calls subject to Section 64.1300(a), if the involved payphone service providers so agree.[38]

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[37] *Second Report and Order*, ¶ 9.

[38] 47 C.F.R. § 64.1300(a)

Since those "other arrangements" are usually arrangements with clearinghouses, it appears as if the Commission intended to include clearinghouse arrangements as ones that would meet the Commission's payphone compensation requirements. Similarly, and PSP objection to using a clearinghouse to handle compensation would be unreasonable, given its existing relationship with these clearinghouses. Further, allowing resellers to continue to use clearinghouses to handle PSP compensation directly, coupled with the Commission's recent Memorandum Opinion and Order in *Bell Atlantic-Delaware vs. Frontier* giving PSPs recourse to obtain cooperation from IXCs to obtain reseller information[39] will ensure that PSPs are fairly compensated for each completed call. If a PSP believes it is not being adequately compensated, it can request an audit from the reseller directly or through the clearinghouse. Allowing the use of clearinghouses will allow resellers to avoid the anti-competitive affects of the AT&T and WorldCom proposals, and will eliminate some of the tracking requirements of which IXCs complain in their petitions. Accordingly, the Commission should clarify its *Second Order on Reconsideration* so that if a reseller enters into a contract with a clearinghouse to administer payphone compensation, that reseller should not have to remit PSP compensation to the IXC, since it already does so directly.

CONCLUSION

Telstar strongly urges the Commission to reject the IXCs' proposal to charge switch-based resellers compensation for uncompleted calls. This is an issue of extreme

[39] Bell Atlantic-Delaware, Inc., et. al., v. Frontier Communications Services, Inc., et. al., File No. E-98-48 2001 WL 327619 (F.C.C.) released April 5, 2001.

importance, and the stakes to resellers are high. If granted, the AT&T/WorldCom Petitions will have devastating effects on resellers like Telstar, and could indeed result in resellers having to choose between incurring enormous increases in PSP compensation or being forced from the market for calls originating from payphones. Given these dramatic negative results, along with the AT&T/WorldCom proposals' blatant violation of Sections 276, 201 and 202 of the Act, as well as Commission precedent, Telstar respectfully requests the Commission deny the AT&T, WorldCom and Global Crossing Petitions for Reconsideration and/or clarification submitted in this proceeding.

Respectfully submitted,

TELSTAR INTERNATIONAL, INC.

By: ______________________

Hope Halpern Barbulescu
Director of Regulatory Affairs
Telstar International, Inc.
1 North Broadway
White Plains, NY 10601
914-428-5555 ext. 219
hope@telstar-usa.com

Its attorney

Dated: October 8, 2001

ATTACHMENT A

PELORUS GROUP REPORT

Prepaid Telephony Markets

Calling Cards, Wireless and Wireline

The
PELORUS
Group

November, 2000

time and then must find ways to make any other calls -- both business and personal -- using their own money.

2.5.3.1 Increased Customer Choices

The variety of prepaid telecommunications services has expanded the options consumers have for making calls. The availability of prepaid services increase the customers' options in obtaining telecommunications services in two ways:

1) They can choose either prepaid or post-paid for the services they have; and
2) They can choose to have services they would not have had in the past.

And, with each additional service a customer gets, it increases the customer's options for how a call will be made. Now, virtually everyone has the potential option of making local and long distance calls from either home or away from home, for using a mobile phone, and for using calling cards, no matter where they are, where they live, or what is their financial status. Customers can choose which options to use based upon where they are located, what is most convenient, what is most cost-effective, and what is best for their budget whenever they make a telephone call.

2.6 Providers

The providers of prepaid telephony consist of many of the major and minor telecommunications firms that provide post-paid telephony services. This section lists the key prepaid telephony companies. Each of the prepaid service vendors is profiled in more detail in their respective chapters: calling card in Chapter III, wireless in Chapter IV and wireline in Chapter V.

Market turmoil is characteristic of each of the provider environments in the prepaid markets. The current set of key prepaid calling card vendors are:

- 9278 Communications;
- Blackstone;
- Digitec;
- IDT;
- PaySmart America;
- Qwest;
- Sterling Time Company (STC);
- U.S. South Communications;
- Viatel/Econophone; and
- WorldCom.

Mergers and acquisitions is the dynamic that has driven the playing field among mobile phone service providers. Several of the largest mobile phone (cellular and PCS) firms have merged operations within the last few months or year. The key companies now are:

- AT&T Wireless Group;
- Cingular Wireless;
- Sprint PCS;
- Verizon Wireless Inc.;
- VoiceStream.

ATTACHMENT B

RESELLER LETTERS

Howard Segermark
202-547-7517
7417

WORLDCOM.

July 31, 2001
Mailed Via Airborne Express

In response to FCC Order Docket No. 96-128, this letter will serve as notice that MCI WorldCom intends to modify its handling of calls originating from payphones. Commencing October 1, 2001, MCI WorldCom will charge all of its wholesale customers a payphone surcharge in the amount of $0.26 per call on all calls that originate from a payphone. This charge will cover the compensation due payphone service providers (PSPs) as well as MCI WorldCom's costs associated with making these payments to the PSPs.

All calls that originate from a payphone that are delivered for completion to a facilities based reseller (FBR) (i.e., an entity that has its own switch/platform) will be deemed completed and will be assessed the payphone surcharge. This charge is applicable to all carrier origination service purchased from MCI WorldCom. If you do not want to be assessed the payphone surcharge for any or all toll free numbers, you must submit to MCI WorldCom an order to block such toll free numbers from being able to be used from a payphone. You will remain liable for payment for all calls originating from a payphone and delivered to your switch/platform, however, MCI WorldCom will make every effort to implement any payphone access restrictions in a timely manner

Those FBR's purchasing carrier origination services whom elect to compensate the PSPs directly for the payphone surcharge must execute and deliver to MCI WorldCom a letter of indemnification that can be obtained from your sales representative. The letter of indemnification will state that you agree to compensate the PSPs directly for all payphone surcharges and that you will indemnify MCI WorldCom for any payphone surcharges that MCI WorldCom incurs. You will also be required to include with the letter of indemnification a letter from certain PSPs whereby the PSPs acknowledge that you will compensate them directly.

Please note that commencing October 1, 2001, MCI WorldCom will no longer consider "07" a payphone identifier digit. Consequently, MCI WorldCom will not assess the payphone surcharge (nor block from payphone access) any calls labeled with the 07 identifier digit unless and until the FCC directs that payphone compensation is owed for such calls.

If you have any questions, please contact your sales representative.

Best Regards,

Dennis Kolb

Dennis Kolb
Vice President, MCI WorldCom Wholesale Marketing

Qwest

September 10, 2001

Subject: **Payphone Compensation**

In response to the FCC Second Order On Reconsideration In CC Docket No. 96-128, this letter will serve as notice that Qwest intends to modify its handling of calls originating from payphones. Pursuant to the language in your agreement concerning regulatory mandates, commencing October 1, 2001, Qwest will charge all of its Wholesale customers a payphone surcharge in the amount of $0.26 per call on all calls that originate from payphones as indicated by information digits 07, 27 or 70. The charge will cover the compensation due payphone service providers (PSPs) as well as Qwest's costs associated with making these payments and meeting its reporting requirements to the PSPs.

All calls that originate from a payphone that are completed on a reseller product or all calls that are delivered for completion to a facilities-based carrier (FBC) (i.e., an entity that has its own switch/platform) will be assessed the payphone surcharge. This charge is applicable to all carrier origination and reseller services purchased from Qwest outside of Qwest's 14 state operating territory. This change does not affect customers who only utilize in-region intraLATA services.

If you do not want to be assessed the payphone surcharge for any or all toll free numbers, you must submit to Qwest an order to block such toll free numbers from being able to be used from a payphone. However, you will remain liable for payment for all calls originating from a payphone and delivered to your switch/platform. Qwest will make every effort to implement any payphone access restrictions in a timely manner.

Those resellers and facility-based carriers whom elect to compensate the PSPs directly for the payphone surcharge must execute an amendment to their Wholesale Services Agreement that can be negotiated with your sales representative. The amendment will state that you agree to compensate the PSPs directly for all payphone surcharges. In addition, all resellers and carriers electing to compensate PSPs directly must provide call completion information (including originating ANI, date, time of day, and 1-800 number called) by PSP to each PSP in computer readable format indicating the toll free and access number that Qwest has delivered and the volume of calls for each toll free and access number that you have received from each of the PSPs. In this amendment you will also agree to indemnify Qwest for any payphone surcharges and related costs that Qwest may incur as a result of any failure or delay in your payment to the PSPs and for any costs that Qwest may incur as a result t of your failure to provide the call completion and volume information. You will also be required to include with the amendment, a letter of agreement from each PSP whereby the PSP acknowledges that you will compensate them directly and provide the required call completion and volume information.

If you have any questions or would like to discuss this notice please contact your Qwest Sales Representative

Sincerely,

Dana Filip

Senior Vice President Wholesale Customer Operations Qwest

cc:

Global Crossing Telecommunications, Inc.
Carrier Services Group
180 South Clinton Avenue
Rochester, NY 14646
Tel +1.800.675.6209
www.globalcrossingcarrier.com

Global Crossing

September 14, 2001

Constantin Barbalescu
President
Telestar Intl
One North Broadway, Suite 128
White Plains, NY 10601

Dear Mr. Barbalescu:

On April 5, 2001 the FCC released its Second Order on Reconsideration in *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128 ("Second Reconsideration Order"). In that Order, the FCC changed the manner in which it allocated responsibility among interexchange carriers for the payment of compensation for dial-around calls that originate from payphones. Specifically, the Commission has now placed the responsibility for the payment of per-call compensation upon the first interexchange carrier that handles such calls. Therefore, Global Crossing shall terminate the *Payphone Dial-Around Compensation Agreement* that exempts payphone surcharge with your company.

Global Crossing will determine how to meet this change in responsibility in the next few weeks. Given the inconvenience and sensitivity of this industry-wide issue Global Crossing will be sending another formal written letter providing more detail on our solution.

If you have any questions regarding payphone compensation or about the changes required by the FCC Order, please contact David Farrance at 716-777-8243.

Sincerely,

Todd M. Tribunella
Product Manager, Toll Free Services

Broadwing
11101 Metric Blvd
Suite 821-A
Austin, Texas 78758
phone 512.742.2400
www.broadwing.com

September 1, 2001

Dear Valued Customer:

This letter is notification that in response to FCC Order Docket No. 96-128, Broadwing Communications Services Inc. will modify its handling of calls originating from payphones. Beginning October 1, 2001, Broadwing will charge your company a payphone surcharge of $0.35 per call for calls that originate from a payphone. Broadwing will consider all calls that originate from a payphone that are delivered for completion to a facilities based reseller (FBR) (i.e. an entity that has its own switch/platform) to be completed calls and will assess the payphone surcharge on such calls. This surcharge will cover the compensation due payphone service providers (PSPs) as well as Broadwing's costs associated with making these payments to PSPs.

To assist you in reconciling these calls, it is important to note that this only refers to CDR with a call type = P and a Record Type = 07, 27, 29, 70. Broadwing will only assess the payphone surcharge to any calls labeled with the "07" identifier digit if the originating ANI is identified to be a payphone by the National Payphone Clearinghouse (NPC) and thus requires that a surcharge be assessed for such calls. To help you further, please refer to position 47 for Calltype and Positions 299-300 for Record Type of the CDR ASCII layout found in your Broadwing On Line Users Guides.

If you have any questions, please contact your Broadwing Account Manager.

Nancy Rogowski
Vice President and General Manager - Wholesale Switched Services
Broadband Sales Division